IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 7921 OF 2005

Capt. V.K. Saigal .. Applicant

Vs.

Jay Container Services
Company Ltd. & Anr. .. Respondents

Mr. S.V. Marwadi for applicant.
Ms. S.D. Shinde, APP for respondent no.2-State.

CORAM: S.C. DHARMADHIKARI, J.

Date : December 07, 2005.

P.C.:

1. Not on board. Mentioned. Produced papers due to urgency.

2. Heard Mr. Marwadi for the applicant and Ms. Shinde, the learned APP for respondent no.2-State.

3. The applicant is original accused no.2 in Criminal Appeal No.265 of 2003 which is pending before the Sessions Court at Mumbai.

4. The grievance made by the applicant is that on 3rd December 2005 when this appeal was placed before the learned Sessions Judge, he could not remain present. The learned Judge issued a non-bailable warrant. The applicant is 55 years of age and Chairman and Managing Director of SDS Shipping Pvt. Ltd. He had travelled abroad after seeking permission from this court. The order to that effect was passed on 4th October, 2005 by this court in Criminal Writ Petition No.2024 of 2005. He has deposited the amount also. In these circumstances, the learned Judge should not have proceeded to issue a non-bailable warrant against the applicant. It is not as if the applicant is out of India. He had attended the court on previous occasion but on that particular day he was unable to attend. The applicant has set out sufficient cause for not being able to remain present on 3rd December, 2005.

5. In view of the aforesaid circumstances, the application is allowed. The order passed by the learned Sessions Judge issuing non-bailable warrant is set aside. However, the applicant shall remain

present on the adjourned date i.e. 8th December, 2005. The applicant is at liberty to seek exemption from personal appearance and if such an application is filed, the learned Sessions Judge at Mumbai shall deal with the same on its own merits.

. Parties to act upon an authenticated copy of this order.

(S.C. Dharmadhikari,J)